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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,851	02/11/2004	Uwe Jurgen Becker	CM2687MQ	3886

27752 7590 05/25/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER

BOGART, MICHAEL G

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,851

Applicant(s)

BECKER ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-12 are rejected under 35 U.S.C. § 103(a) as obvious over Tanzer *et al.* (US 5,425,725 A).

Regarding claim 1, Tanzer *et al.* teach an absorbent core (112, 120) useful for an absorbent article comprising a substrate layer (98) and absorbent material (110), said absorbent material (110) comprising an absorbent polymer material and *optionally* an absorbent fibrous material, said absorbent fibrous material not representing more than about 20 % of the weight of absorbent polymer material, wherein said absorbent material (110) is immobilized (trapped in

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pocket regions (108)) when wet such that said absorbent core (112, 120) achieves a wet immobilization.

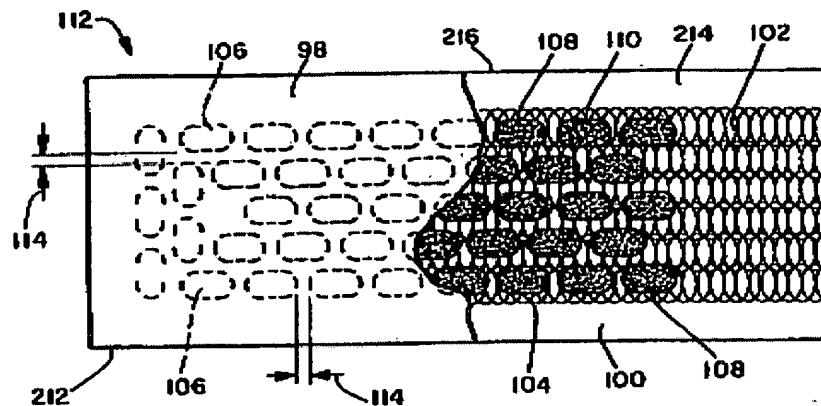


FIG. 6

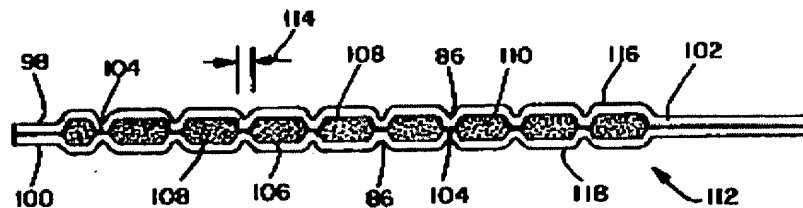


FIG. 7

Tanzer *et al.* do not expressly disclose the specific degree of wet immobilization.

Generally, differences in test characteristics will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such test characteristic is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or

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workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). Regarding claims 1-12, the benefits of immobilizing the inner materials of a diaper when soaked with urine would have been known prior to applying a test (e.g., preventing the absorbent materials from bunching up excessively in discrete areas of the diaper causing discomfort to a wearer, or aesthetic considerations), making these values result-effective variables. One of ordinary skill in the art would have recognized that increasing the wet immobilization properties of the absorbent material in a diaper or similar article would increase its resistance to moving around between top and back sheets and would prevent the absorbent from bunching up uncomfortably. MPEP § 2144.04.

Regarding claim 2 Tanzer *et al.* teach a thermoplastic material (100), which contacts said absorbent polymer material (110)(col. 13, lines 1-8).

Regarding claim 3, Tanzer *et al.* teach that the thermoplastic material (100) is a hot melt adhesive (col. 13, lines 1-8).

Regarding claim 4, Tanzer *et al.* teach that said thermoplastic material (100) is fiberized or fibrous (col. 13, lines 1-8).

Regarding claim 5, Tanzer *et al.* teach that said thermoplastic material (100) substantially immobilizes said absorbent polymers (110).

Regarding claim 6, Tanzer *et al.* teaches the absorbent core (112, 120) having a distribution of absorbent polymer material wherein the distribution of absorbent polymer material is profiled (col. 19, lines 53-col. 22, line 29).

Regarding claim 8, Tanzer *et al.* teach at least two substrate layers (98, 100).

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Regarding claim 9, Tanzer *et al.* teach that one of the substrate layers (98, 100) is a hydrophilic non-woven (e.g., Hydrofil ®)(col. 13, lines 1-8; col. 36, lines 26-39).

Regarding claim 10, Tanzer *et al.* teach at least one substrate layer (98) and at least one cover layer (28).

Regarding claim 11, Tanzer *et al.* teach that one of the substrate layer (98) or cover layer (28) is a hydrophilic non-woven (e.g., Hydrofil ®)(col. 13, lines 1-8; col. 36, lines 26-39).

Regarding claims 7 and 12, mere changes in size alone are not sufficient to patentably distinguish an invention over the prior art. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

Response to Arguments

The rejections under 35 USC §§ 112 and 102 are withdrawn.

Applicant's arguments filed 07 March 2006 concerning the rejections under 35 USC § 103 have been fully considered but they are not persuasive.

Applicants assert that the office has failed to provide a teaching that recognizes wet immobilization. This argument is not persuasive because Tanzer *et al.* teaches pockets that maintains the location of superabsorbent material when the article is wetted (col. 2, lines 1-28), meaning that the reference recognizes the benefit of immobilizing the superabsorbent material.

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Although the specific degree of wet immobilization may not be specified, increasing the ability of the pockets to maintain the location of the superabsorbent material increases wet immobilization of the superabsorbent material. Applicants are reminded that during patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” See *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

Regarding claims 7 and 12, applicants assert that changing dimensions in the cross width may result in an article that performs differently. This argument is not persuasive because changing the crotch width does not change the manner in which the article functions. It only changes the degree of how much liquid it can absorb.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

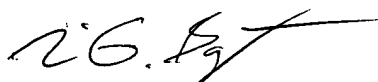
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
19 May 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

